

PATENT COOPERATION TREATY

From the:
INTERNATIONAL PRELIMINARY EXAMINING AUTHORITY

To:

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PCT

WRITTEN OPINION

(PCT Rule 66)

Date of mailing (day/month/year)	17.04.2003
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Applicant's or agent's file reference 9306.3.WO	REPLY DUE	within 1 month(s) from the above date of mailing
International application No. PCT/US02/02043	International filing date (day/month/year) 22/01/2002	Priority date (day/month/year) 02/02/2001
International Patent Classification (IPC) or both national classification and IPC		
G06F19/00		
Applicant		
MERCURYMD, INC. et al.		

1. This written opinion is the first drawn up by this International Preliminary Examining Authority.

2. This opinion contains indications relating to the following items:

- I Basis of the opinion
- II Priority
- III Non-establishment of opinion with regard to novelty, inventive step and industrial applicability
- IV Lack of unity of invention
- V Reasoned statement under Rule 66.2(a)(ii) with regard to novelty, inventive step or industrial applicability; citations and explanations supporting such statement
- VI Certain document cited
- VII Certain defects in the international application
- VIII Certain observations on the international application

3. The applicant is hereby invited to reply to this opinion.

When? See the time limit indicated above. The applicant may, before the expiration of that time limit, request this Authority to grant an extension, see Rule 66.2(d).

How? By submitting a written reply, accompanied, where appropriate, by amendments, according to Rule 66.3. For the form and the language of the amendments, see Rules 66.8 and 66.9.

Also: For an additional opportunity to submit amendments, see Rule 66.4. For the examiner's obligation to consider amendments and/or arguments, see Rule 66.4 bis. For an informal communication with the examiner, see Rule 66.6.

If no reply is filed, the international preliminary examination report will be established on the basis of this opinion.

4. The final date by which the international preliminary examination report must be established according to Rule 69.2 is: **02/06/2003**.

Name and mailing address of the international preliminary examining authority:  European Patent Office D-80298 Munich Tel. +49 89 2399 - 0 Tx: 523656 epmu d Fax: +49 89 2399 - 4465	Authorized officer / Examiner Sisk, A Formalities officer (incl. extension of time limits) Schall, H Telephone No. +49 89 2399 2647
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I. Basis of the opinion

1. With regard to the **elements** of the international application (*Replacement sheets which have been furnished to the receiving Office in response to an invitation under Article 14 are referred to in this opinion as "originally filed"*):

Description, pages:

1-27 as originally filed

Claims, No.:

1-34 as originally filed

Drawings, sheets:

1-10 as originally filed

2. With regard to the **language**, all the elements marked above were available or furnished to this Authority in the language in which the international application was filed, unless otherwise indicated under this item.

These elements were available or furnished to this Authority in the following language: , which is:

- the language of a translation furnished for the purposes of the international search (under Rule 23.1(b)).
- the language of publication of the international application (under Rule 48.3(b)).
- the language of a translation furnished for the purposes of international preliminary examination (under Rule 55.2 and/or 55.3).

3. With regard to any **nucleotide and/or amino acid sequence** disclosed in the international application, the international preliminary examination was carried out on the basis of the sequence listing:

- contained in the international application in written form.
- filed together with the international application in computer readable form.
- furnished subsequently to this Authority in written form.
- furnished subsequently to this Authority in computer readable form.
- The statement that the subsequently furnished written sequence listing does not go beyond the disclosure in the international application as filed has been furnished.
- The statement that the information recorded in computer readable form is identical to the written sequence listing has been furnished.

4. The amendments have resulted in the cancellation of:

- the description, pages:
- the claims, Nos.:

the drawings, sheets:

5. This report has been established as if (some of) the amendments had not been made, since they have been considered to go beyond the disclosure as filed (Rule 70.2(c)):
(Any replacement sheet containing such amendments must be referred to under item 1 and annexed to this report.)

6. Additional observations, if necessary:

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

1. The questions whether the claimed invention appears to be novel, to involve an inventive step (to be non-obvious), or to be industrially applicable have not been and will not be examined in respect of:

the entire international application,

claims Nos. 1-34,

because:

the said international application, or the said claims Nos. relate to the following subject matter which does not require an international preliminary examination (*specify*):

the description, claims or drawings (*indicate particular elements below*) or said claims Nos. 1-34 are so unclear that no meaningful opinion could be formed (*specify*):
see separate sheet

the claims, or said claims Nos. are so inadequately supported by the description that no meaningful opinion could be formed.

no international search report has been established for the said claims Nos. .

2. A written opinion cannot be drawn due to the failure of the nucleotide and/or amino acid sequence listing to comply with the standard provided for in Annex C of the Administrative Instructions:

the written form has not been furnished or does not comply with the standard.

the computer readable form has not been furnished or does not comply with the standard.

**WRITTEN OPINION
SEPARATE SHEET**

International application No. PCT/US02/02043

I. Basis of the Opinion

The basis of this written opinion is the application as originally filed.

III. Non-establishment of opinion with regard to novelty, inventive step and industrial applicability

Although claims 1,9,17,23,24,25,31,32 have been drafted as separate independent claims, they appear to relate effectively to the same subject-matter and to differ from each other only with regard to the definition of the subject-matter for which protection is sought and in respect of the terminology used for the features of that subject-matter. The aforementioned claims therefore lack conciseness. Hence, claims 1,9,17,23,24,25,31,32 do not meet the requirements of Article 6 PCT.

However, to assist the applicant in filing a new set of claims and also with a view to the requirements of Article 33(1)-(5) PCT, an assessment of prior art has been made.

- a. The following documents, D1 (WO 00/57339) and D2 (US 5561446) are cited in the international search report.
- b. According to the description, it appears that the present application is directed to a system for extracting medical records from a server and formatting them for display on a mobile device and allowing a user to update the patient records using the device.
- c. Document D1, which is provisionally considered to be the closest prior art, discloses a system which extracts medical records from a medical records database server and formats them for presentation on a mobile device (see page 4, lines 11-28), whereby a physician can enter patient data to update patient records (see page 14, lines 17-21).
In document D1, the provision of ergonomic actuators is not explicitly disclosed.
Therefore it appears that the system of D1 differs from the system of the present application in that it may not be easy to navigate between the screens of the device.
- d. Document D2 discloses ergonomic buttons to aid in navigation between screens on the mobile device (see figures 5-8). It would be obvious and well within the customary practice followed by the person skilled in the related art to combine the two documents to arrive at the subject-matter of the present application.
- e. Even if amendments are filed to overcome the above objections, it is not at present apparent which part of the application could serve as the basis for a new independent claim that would satisfy the requirements of Article 33(1)-(4) PCT with respect to novelty, inventive step and industrial applicability.
- f. If amendments are filed, the applicant should comply with the requirements of Rule 66.8 PCT and indicate the basis of the amendments in the documents of the application as originally

**WRITTEN OPINION
SEPARATE SHEET**

International application No. PCT/US02/02043

filed (Article 43(2)(b) PCT) otherwise these amendments may not be taken into consideration for the establishment of the international preliminary examination report. The attention of the applicant is drawn to the fact that if the application contains an unnecessary plurality of independent claims, no examination of any of the claims will be carried out.